



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

March 5, 2018

VIA ECF and BY HAND

Hon. Gabriel W. Gorenstein  
United States Magistrate Judge  
United States District Court  
500 Pearl Street  
New York, New York 10007

**Re: *ACLU v. Dep't of Health and Human Services, et al.*,  
No. 17 Civ. 5514 (GBD) (GWG)**

Dear Judge Gorenstein:

This Office represents defendants the Department of Health and Human Services, the Department of Justice, the Department of Labor, and the Department of the Treasury in the above-referenced proceeding brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* Having consulted with counsel for plaintiff, we respectfully submit this letter pursuant to the Court's order dated November 2, 2017, which directs the parties jointly to report on the status of this matter every sixty days. *See* ECF No. 27. The parties submitted their first such report on January 2, 2018. *See* ECF No. 28. This is the parties' second report.

Department of Health and Human Services ("HHS"): As previously noted, HHS made an interim release on December 28, 2017, which included 122 pages withheld in their entirety. Subsequently, at ACLU's request, HHS reprocessed 95 of the originally withheld pages, releasing 93 in their entirety and 2 with redactions. HHS has completed its search and is reviewing and processing an additional 2,002 pages. HHS anticipates that it will release any remaining non-exempt, responsive records by late April.

Department of Justice ("DOJ"): The DOJ Civil Division and Civil Rights Division have completed their responses, and ACLU is not challenging these responses. DOJ's Office of Information Policy ("OIP") is processing plaintiff's FOIA request on behalf of the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, and Legal Policy. The searches of these components are complete and yielded a total of approximately 34,000 records. OIP currently is reviewing these records for responsiveness. OIP anticipates that it will be able to provide ACLU with further information about this review and to propose a production schedule based on the number of non-exempt records determined to be responsive to plaintiff's request by April 30, 2018. DOJ's Office of Legal Counsel ("OLC") has completed its search. OLC anticipates that it will be in a position to provide ACLU with

further information about any responsive, non-exempt records and to propose a production schedule based on the number of responsive records found by the end of April.

Department of Labor (“DOL”): As noted, DOL has determined that its Office of the Solicitor has no responsive records and its remaining searches are focused on two other DOL components, namely, the Office of Federal Contract Compliance Programs (“OFCCP”) and the Employee Benefits Security Administration (“EBSA”). OFCCP has confirmed that it has issued no final records with respect to the topics identified by plaintiff, and is in the process of determining whether it has responsive non-exempt communications with third parties. The parties are discussing electronic search terms to be used by EBSA.

Department of the Treasury (“Treasury”): Treasury’s follow-up search using ACLU’s suggested search terms yielded approximately 14,000 records, which are being reviewed for responsiveness. Treasury has reviewed approximately 2,200 records thus far, and no responsive records have been identified. Treasury anticipates that it will conclude its review of the remaining records by the end of April.

On March 1, 2018, the parties respectfully requested that Judge Daniels adjourn the status conference currently scheduled for March 6, 2018, by approximately sixty days. We understand that the request has been granted and that the conference will be rescheduled for May 8, 2018. Pursuant to the Court’s November 2 Order, the parties will provide their third status report on or before May 4, 2018.

Respectfully submitted,

GEOFFREY S. BERMAN  
United States Attorney  
Southern District of New York

By: s/ Michael J. Byars  
MICHAEL J. BYARS  
Assistant United States Attorney  
Telephone: (212) 637-2793  
Facsimile: (212) 637-2717  
E-mail: michael.byars@usdoj.gov

cc: Joshua Block, Esq. (via ECF)